IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R .

MANAGER M/S MITTAL STEEL MANUFACTURING COMPANY. V. CHOTHA RAM AND ANOTHER.

S.B.CIVIL WRIT PETITION NO.1842/2004.
Under Article 226/227 of the Constitution of India.

DATE OF ORDER: 8.4.2005

PRESENT.

HON'BLE MR.JUSTICE R.P.VYAS.

Mr.Anil Bhandari, for Petitioner.
Mr.Mahesh Thanvi, for Respondents.

BY THE COURT:

The Manager – M/s. Mittal steel Manufacturing Company has filed the instant petition with a prayer that the award dated 17.12.2003 (Annexure 6), passed by the Judge, Labour Court, Jodhpur, in Labour Case No.254/2001, may be quashed and set aside.

Brief facts giving rise to the instant petition are that Chotha Ram – Respondent No.1 made an application before the Joint Labour Commissioner, Jodhpur, on 16.3.1999, stating therein that on 11.1.1998, he was appointed as Mistry by M/s. Mittal Steel Manufacturing Company of the petitioner and he

worked there upto 10.3.1999.

In response to the Notice, the petitioner-company filed a reply on 14.7.1999, stating therein that Respondent No.1 – workman was neither appointed by the petitioner-company as Mistry, nor he worked with the employer. In support of the reply to the notice, the petitioner-company submitted the Attendance Register for the period January, 1998 to March, 1998 before the Conciliation Officeer.

The Conciliation Officer, after hearing both the parties, submitted his Failure Report (Annexure 1) to the State of Rajasthan, wherein it was mentioned that the name of respondent No.1 was not shown in the Attendance Register.

The State of Rajasthan made a reference to the learned Labour Court vide its Notification dated 12.6.2001.

In the claim petition, before the Labour Court, Jodhpur, the respondent No.1 – workman stated that he was appointed as a Mistry on 11.1.1998 and on 14.12.1998, due to accident, he received injuries on his right hand and, thereafter, he was hospitalised. He reported for duty on 14.2.1999 and worked there upto 10.3.1999.

The petitioner – company filed a reply (Annexure 2) to the claim petition and stated that neither the respondent No.1 – workman was appointed on 11.1.1998, nor he worked with the petitioner-company. It was stated by the petitioner – company that the Attendance Register for the period January, 1998 to

March, 1998 was produced before the Conciliation Officer and the Conciliation Officer held that the name of respondent No.1 – workman does not find in the Attendance Register.

Respondent No.1 – workman and the petitioner – company also filed their respective affidavits before the Labour Court. In the affidavit (Annexure 3), filed by the petitioner – company, it was stated that neither the respondent No.1 – workman was appointed in the petitioner – company, nor he worked there. It was denied that the respondent No.1 – workman received any injury in the factory premises. It was also stated that in the Attendance Register, name of respondent No.1 – workman does not find place.

On 19.9.2003, respondent No.1 – workman gave his statement on oath (Annexure 4) before the Labour Court and during the cross-examination, he stated that on 14.12.1998, he (the workman) received injuries and remained in the hospital for three months.

On behalf of the petitioner – company, Shri Basant Mittal, Manager of the Factory, appeared before the Labour Court and gave statement on 5.11.2003 (Annexure 5) and during the cross-examination, he stated that neither the respondent No.1 – workman was appointed in the Factory on 11.1.1998, nor he (the workman) received any injury in the factory on 14.2.1999. It was also stated that the respondent No.1 – workman never worked upto 10.3.1999.

After hearing both the parties and perusing the documents available on record, the learned Labour Court, Jodhpur passed the award dated 17.12.2003 (Annexure 6) against the petitioner-company and in favour of respondent No.1 – workman and directed the petitioner-company to reinstate the workman along with 25% back wages w.e.f. 12.6.2001.

Being aggrieved by the Award dated 17.12.2003 (Annexure 6), passed by the learned Labour Court, Jodhpur, the petitioner – company has filed the instant petition.

It is submitted by the learned counsel for the petitioner-company that neither respondent No.1 – workman was engaged in the Factory, nor he worked there as a Mistry. It is further submitted by the learned counsel for the petitioner that it is proved from the Attendance Register produced before the Conciliation Officer by the Management that neither the respondent No.1 - workman was engaged to carry out the work of Mistry on 11.1.1998, nor he worked there upto 10.3.1999. Not only that, even the Conciliation Officer has also held that the name of respondent No.1 – workman does not find place in the Attendance Register. It is also submitted that when the respondent No.1 – workman did not work in the factory, then the question of receiving injuries by him (workman) during the course of employment in the factory premises does not arise.

It is contended by the learned counsel for the petitioner that respondent No.1 – workman has neither produced any

appointment order , nor any document in support of his claim in order to prove that he was appointed by the petitioner-company.

It is further contended by the learned counsel for the petitioner that there is discrepancy in the statement of the respondent No.1 – workman (Annexure 4) with regard to period of hospitalisation and after hospitalisation, joining duty in the Factory.

It is also contended that the burden lies on respondent No.1 – workman to prove that he was engaged, he completed the prescribed period of 240 days and his services were terminated by the employer without following the provisions of the Industrial Disputes Act, which he has utterly failed to prove before the Labour Court. He has submitted a photostat copy of the Attendance Register of the workers for the period January, 1998 to December, 1998, in which name of the petitioner does not find place.

It is significant to note that under Article 226/227 of the Constitution, the High Court has the power of superintendence over the subordinate courts. Sofar as the contention of the petitioner-company that in the Attendance Register, name of the respondent-workman does not find place, is concerned, it is a question of fact, which cannot be decided by this Court. Had the aforesaid Attendance Register been produced by the petitioner-company before the Labour Court, the veracity of the fact could

have been determined by the Labour Court by confronting the same with the respondent-workman.

In support of his contentions, learned counsel for the petitioner has referred to the case of The Range Forest Officer v. S.T.Hadimani (JT 2002 (2) SC 238), in which it was held by their Lordships of the Supreme Court that since it was the claim of the respondent that he had worked for 240 days which was denied by the management, it was for the respondent to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. It was also held that filing of the affidavit cannot be regarded as sufficient evidence. Therefore, the award given by the Tribunal was set aside.

In Municipal Corporation, Faridabad v. Siri Niwas (2004 SCC (L&S) 1062), with regard to burden of proof, it was held by their Lordships of the Supreme Court that the burden was on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment. On facts, the workman had adduced no evidence whatsoever before the Tribunal or High Court, apart from examining himself, which was not enough. It was pointed out that the workman could have placed the material before the Tribunal. In terms of Section 25-F of the Industrial Disputes Act, 1947, an order retrenching a workman would not be effective unless the conditions precedent therefor are satisfied.

This Court, in D.B.Civil Special Appeal (W) No.246/2004,

decided on July 14, 2004, where the case of the Department was that the respondent was not at all employed by the employer and he had forged the appointment order, keeping in view the peculiarity of the circumstances, directed the appellant to pay compensation of Rs.60,000/- to the respondent in lieu of the reinstatement and back wages, as the respondent had worked only for 22 months in the Department and the Labour Court has directed for reinstatement of the respondent with full back wages.

In Arjun Singh and 4 Others v. Labour Court, Jodhpur & Others (2004 (4) WLC 145), the point in issue was whether the Labour Court was justified in awarding compensation to the appellants in lieu of reinstatement. The appellants did not go through a process of selection and were merely appointed on daily wages basis. The time lag in each case between the passing of the award and the date of termination is quite a substantial one. Again between date of termination of services of the appellants as of now several years have gone by. Thus, a Division Bench of this Court, in these circumstances, held that the Labour Court and the learned Single Judge were right in not foisting the appellants on the employers after such long spells of time. The appellants cannot be directed to be reinstated now as they have been out of touch with their respective job for long. It is well know that faculties rust when they are not used for long. An employee who is out of job for number of years, loses his

proficiency, productivity and efficiency. In case the appellants are directed to be reinstated after several years, it will lead to complex situations. Not only question of their seniority, promotion and emoluments would arise, it will also affect the seniority and chances of promotion of employees who have been working continuously with respondents after the termination of the services of the appellants.

Lastly, the learned counsel for the petitioner has relied on the case of Management of Connemara Hotel, Spencer International Hotels Ltd., Madras v. Presiding Officer, III Additional Labour Court, Madras and Another (1998-II- L.L.J.- 33 [Madras]), in which petition was filed by the employer challenging an award of the Labour Court setting aside the termination of a casual employee's services and directing his reinstatement with back wages. The High Court, after perusing the evidence and material available on record, remanded the matter back to the Labour Court to quantify the compensation payable to the second respondent, vacated the finding of the Labour Court that the second respondent had been victimised and set aside the order of the Labour Court directing reinstatement of the second respondent with back wages.

The aforesaid authorities referred to by the learned counsel for the petitioner are of no help or assistance to him, as in the instant case, the employer himself has admitted during the course of cross-examination that no appointment order is given

to the employee. The management also admitted that the payment is made to the employees by Acquittance Roll. A payment register is also maintained by them. The E.S.I.Cards are also issued to the employees and the PF of the employees is also deposited through challan in the Bank. But, not a single document was produced by the employer before the Labour Court. When the employer himself has admitted that no appointment order is given to the employee, then how the employee would be able to produce any document, except filing an affidavit and stating on oath, as has been stated in the instant case by the respondent No.1 – workman.

It is submitted by the learned counsel for the respondents that the petitioner has not filed any documentary evidence as Workers Attendance Register, Payment Register etc. before the Labour Court, in order to establish and prove its case that the workman was not employed by the employer. As such, in the absence of any documentary evidence, the adverse inference was rightly drawn by the Labour Court against the petitioner. The Labour Court has also rightly observed that the workman was the employee of the petitioner – company and his services were illegally terminated by the employer-petitioner without following the procedure prescribed under the Industrial Disputes Act.

It is further submitted by the learned counsel for the respondents that the petitioner has not come to this Court with

clean hands as the petitioner has not deliberately produced the Attendance Register before the Labour Court, which could have been tendered by them as an evidence against the workman. But the Attendance Register for the period January, 1998 to March, 1998, wherein the name of the workman did not find place, was submitted before the Conciliation Officer. According to the learned counsel for the respondents, why the Attendance Register for the period 1st April, 1998 to 10th March, 1999, up to which date the workman has claimed to have given his services to the Management by carrying out the work of Mistry, was not produced by the petitioner-company.

It is also submitted by the learned counsel for the respondents that the whole administrative record of the workers, namely, Attendance Register, Salary Payment Register, Leave Register, PF Deduction Register and file of the appointment orders was with the petitioner-company, but not even a single document was produced before the Labour Court, so as to enable the learned Labour Court to drawn an adverse inference against the employee. Thus, there was serious lapse on the part of the petitioner-company in not producing the Attendance Register before the Labour Court, in support of their contention, therefore, the learned Labour Court, in the absence of any documentary evidence, has rightly disbelieved the statement of the Management and has rightly drawn an adverse inference against the petitioner and passed an impugned award

against the employer – petitioner, which deserves to be upheld.

Sofar as minor discrepancies as pointed out by the learned counsel for the petitioner in the statement during the course of cross-examination of the workman Chotha Ram are concerned, it is vehemently argued by the learned counsel for the respondents that no doubt, some discrepancies were found in the statement of the workman, but they are of minor in nature and the same cannot be regarded as material one. Minor discrepancies in the cross-examination do not hurt the case, rather they guarantee that the witness has not been tutored. Hence, the minor discrepancies found in the statement of the workman would not affect his case.

In order to establish his case that the respondent-workman was engaged by the petitioner-company on 11.1.1998, he has worked there upto 10.3.1999 and during the course of employment he received injuries on 14.12.1998, and on 11.3.1999, the Manager of the factory refused him to carry out the work, affidavits of Bheru Singh, Munna Gupta, and Surendra Chaudhary have been submitted in support of the reply to the writ petition, but they were not filed before the Labour Court.

In support of his contentions, learned counsel for the respondents has relied on the case of Sadhu Ram v. Delhi Transport Corporation ([1983] 4 SCC 156), in which, with regard to scope of power of the High Court for interference with the award of the Labour Court under Article 226 of the Constitution

of India, it was held by their Lordships of the Supreme Court that the wide jurisdiction conferred under Article 226 has to be exercised with great circumspection. The Court cannot constitute itself into an appellate court over Tribunals. The questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings of the Tribunal.

In Mohd. Yunus v. Mohd. Mustaqim and others (AIR 1984 SC 38), it was held by their Lordships of the Supreme Court that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal.

In Nicks (Ubdua) Tools v. Ram Surat and Another (2004)8 SCC 222), it was held by their Lordships of the Supreme Court that since the respondent-workman was in the service of the appellant-management at least up to 22.4.1993, the burden of proving that he voluntarily left the services then falls on the appellant management. Thus, the finding of the Labour Court was accepted by the High Court and this being a finding of fact, cannot be said to be perverse and there is no reason to interfere with the same in appeal. It was held that it is for the first time that wen the appellant tried to produce additional evidence,

which was rightly not considered by the High Court because the same was not brought on record in a manner know to law.

In Daulat Ram v. Sodha (2004 AIR SCW 6523), it was held by their Lordships of the Supreme Court that where there are suspicious circumstances, the onus is on the propounder to remove the suspicion by leading appropriate evidence. The burden to prove that the Will was forged or that it was obtained under undue influence or coercion or by playing a fraud is on the person who alleges it to be so. In the instant case, when the Management makes statement that the workmam was never employed by them, then the onus of burden shifts on the Management to prove that the workman was never engaged by them.

Learned counsel for the respondents has also referred to the cases of Rajasthan State Road Transport Corporation v. Judge, Labour Court, Bikaner & Another (1997 (3) W.L.C. p.401), Hotel Man Singh v. Judge, Industrial Tribunal, Jaipur and Another (2000 (4) W.L.C. p.184), Indian Overseas Bank v. I.O.B.Staff Canteen Workers' Union and Another (2000) 4 SCC 245), Bhupat Singh v. State of Rajasthan & Others (2001 W.L.C. (UC) 532), State of Rajasthan v. Rana Ram & Another (2001 (5) WLC 148), The Nagaur Cooperative Marketing Society Ltd. v. The State of Rajasthan & Others (2002 (5) W.L.C. 118), Sadhana Lodh v. National Insurance Company Ltd. & Another (2003 (2) W.L.C. 255), Modilal & Another v. L.Rs. of Chatra

Ram & Others (2003 (2) W.L.C. 715), Lal Singh v. The Authority Under Shops & Commercial Establishments Act, Sri Ganganagar & Another (2003 (1) W.L.C. 154), State of Rajasthan v. Ram Chandra & Another (2003 (1) W.L.C. 184), Ram Dhan v. The Judge, Labour Court No.2, Jaipur & Others (2003 (2) W.L.C. 485), and Statesman Ltd. v. Eighth Industrial Tribunal (2004-III-LLJ 261) in support of his contentions.

Heard learned counsel for the parties.

It may be mentioned that the respondent-workman has stated that he has worked with the petitioner-company from 11.1.98 to 10.3.99, on 11.3.99 he was not taken on duty by the employer and, on 14.12.98, he received injuries during the course of employment. The employer has admitted before the Labour Court that no appointment orders are given to the workmen. The employer-management has also admitted that they used to maintain the payment register and the attendance register, but not a single document was produced by them before the Labour Court as evidence in order to establish the fact that the respondent-workman was not engaged by them. It is pertinent to mention here that when the attendance register and payment register were lying with the employer and, as admitted by the employer that the appointment orders are not given to the workmen, then why these documents were not produced before the Labour Court. The workman was not given any appointment order or any document by the employer, therefore,

he was not in a position to produce any document in support of his claim, except to file an affidavit and state on oath that he was engaged by the employer, he worked for the aforesaid period and his services were terminated by the employer without complying with the provisions of the Industrial Disputes Act, 1947. Since no document was lying with the respondent-workman, he could not produce the same before the Labour Court. Then, in such a situation, onus automatically shifts on the employer to produce sufficient/adequate documents in support of his denial, as admitted by the Management before the Labour Court that the attendance register and pay registers are maintained by them, but they were not produced before the Labour Court as an evidence. In these circumstances, the Labour Court has no option, but to draw an adverse inference against the employer ans pass a suitable award in favour of the respondent-workman.

I do not find any illegality, infirmity or material irregularity in the findings given by the Labour Court, Jodhpur, in its award dated 17.12.2003 (Annexure 6).

In the result, I do not find any force in the instant petition.

The writ petition is hereby dismissed.

There will be no order as to costs.

(R.P.VYAS), J.